

In appeals from preliminary hearing orders, the Board has limited jurisdiction. The Board may review only allegations that the Administrative Law Judge exceeded his or her jurisdiction. K.S.A. 1997 Supp. 44-551. This includes review of findings on jurisdictional issues identified in K.S.A. 1997 Supp. 44-534a. Jurisdictional issues include two of the issues listed by respondent: (1) whether claimant met with personal injury by accident; and (2) whether claimant gave notice as required by K.S.A. 44-520.

Claimant worked for respondent packing packages of stickers on an assembly line. She testified that she injured herself when attempting to move a skid jack from underneath a skid. Claimant stated that she had problems moving the skid, eventually called for help, and discovered that the jack was locked underneath the skid. The symptoms in her back appeared the next day or so.

Respondent contends claimant has failed to establish she suffered an accidental injury arising out of and in the course of her employment. Respondent cites a history of back pain and discomfort dating back to 1990. Respondent also contends that the medical records do not support a finding that the accident caused injury. Respondent asserts that under the circumstances of this case the claim cannot be considered compensable without a medical opinion that the event claimant described caused additional injury.

The Appeals Board finds the evidence does establish a compensable injury. Claimant's description of the events is plausible. Claimant gave a consistent history to the medical providers each time relating the symptoms to her attempts to move the skid at work. In addition, while the medical reports do not expressly state an opinion as to the cause of claimant's complaints, several of the physicians appear to assume the cause was as claimant described. Finally, the injury found by Dr. McKinney is, in part, consistent with the history claimant gave. She described a strain of muscle which is used in strenuous pulling activity. While claimant does have a history of back problems, the Board, nevertheless, finds claimant did sustain personal injury by accident as alleged.

As above indicated, the Board's jurisdiction to consider preliminary hearing orders is limited. The second contention by respondent, i.e., that claimant's injury was temporary and has returned to its original underlying state, relates to the nature and extent of claimant's injury, not whether claimant suffered an accidental injury arising out of and in the course of employment. This contention does not, therefore, raise a jurisdictional issue and is not subject to review on appeal.

Respondent's application for review indicates that notice of the accident was to be an issue. Respondent's brief does not address that question. Claimant testified that she gave notice to respondent of her accidental injury within ten days. Claimant's testimony is not contradicted. The Appeals Board finds claimant gave notice as required.

Finally, respondent contends the Administrative Law Judge erred in awarding temporary total disability benefits, including benefits prior to the date of claimant's application for preliminary hearing. Respondent first contends the evidence does not support a finding that claimant is currently temporarily totally disabled. In addition, respondent contends there is no showing of unusual circumstances which warrant awarding benefits prior to the application for preliminary hearing. In our view neither contention raises a jurisdictional issue, and therefore, neither contention is subject to review at this point.

WHEREFORE, the Appeals Board finds that the order by Administrative Law Judge Floyd V. Palmer, dated January 16, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

c: Frederick J. Patton II, Topeka, KS
John David Jurcyk, Lenexa, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director